

The House Committee on Governmental Affairs offers the following substitute to HB 82:

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 12 of Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, so as to establish the Office of State Inspector General; to provide for definitions; to provide for duties; to provide certain powers; to provide procedures for the application of the duties and powers of such office; to provide a duty to report certain actions; to amend Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public disclosure is not required, so as to protect certain records of the Office of State Inspector General from public disclosure; to provide for related matters; to provide for an automatic repeal; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 12 of Title 45 of the Official Code of Georgia Annotated, relating to public officers and employees, is amended by adding a new article to read as follows:

"ARTICLE 7

45-12-210.

As used in this article, the term:

(1) 'Abuse' means the intentional, wrongful, or improper use or destruction of state resources, or seriously improper practice that does not involve prosecutable fraud.

(2) 'Corruption' means an intentional act of fraud, waste, or abuse or the use of public office for personal, pecuniary gain for oneself or another.

(3) 'Employee' means any employee of a state agency.

(4) 'Fraud' means an act of intentional or reckless deceit to mislead or deceive.

(5) 'Inspector general' means the inspector general or his or her designee.

(6) 'Office' means the Office of State Inspector General.

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(7) 'Officer' means any person appointed to a state agency.

(8) 'Official' means any person elected to state office who is the head of a state agency.

(9) 'State agency' means any agency in the executive branch of Georgia and shall include all departments, agencies, boards, and commissions under the authority of the Governor.

(10) 'Vendor' means any person doing business with a state agency in an amount that exceeds \$50,000.00 in a fiscal year.

(11) 'Waste' means a reckless or grossly negligent act that causes state funds to be spent in a manner that was not authorized or represents significant inefficiency and needless expense.

45-12-211.

(a) There is created the Office of State Inspector General, whose purpose shall be to investigate the management and operation of state agencies. The office shall be assigned to the Office of Planning and Budget for administrative purposes only, as described in Code Section 50-4-3.

(b) The Governor, with the advice and consent of the Senate, shall appoint an inspector general who shall have jurisdiction over all officials, officers, and employees of executive branch agencies and vendors and others persons doing business with the executive branch of Georgia. The inspector general shall hold office for a term coinciding with the term of the appointing Governor and until such inspector general's successor is appointed and qualified. The inspector general shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and knowledge of accounting, auditing, financial analysis, law, management analysis, public administration, investigation, or criminal justice administration or other closely related fields.

45-12-212.

The inspector general shall have the following duties:

(1) Investigate the management and operation of state agencies on his or her own initiative, in order to determine whether waste, fraud, abuse, and corruption have been committed or are being committed by officials, officers, or employees;

(2) Receive complaints alleging waste, fraud, abuse, and corruption, and determine whether the information contained in those complaints alleges facts that give reasonable cause to investigate, and, if so, determine if there is a reasonable cause to believe that waste, fraud, abuse, or corruption has been committed or is being committed by an official, officer, or employee. An investigation may not be initiated more than one year after the most recent act of waste, fraud, abuse, or corruption or series of alleged acts of

waste, fraud, abuse, or corruption except where there is reasonable cause to believe that fraudulent concealment has occurred. To constitute fraudulent concealment sufficient to toll this limitation period, there shall be an affirmative act or representation calculated to prevent discovery of the fact that a violation has occurred;

(3) Except as otherwise provided in this Code section, the inspector general shall report suspected acts of waste, fraud, abuse, or corruption that were or are being committed by officials, officers, or employees to the Governor, and where appropriate, to the responsive state or federal prosecuting authority with jurisdiction over the matter if there is reasonable cause to believe that a crime has occurred or is occurring. In addition, the inspector general shall report acts of waste, fraud, abuse, or corruption, as appropriate under the circumstances, to the State Ethics Commission, the appropriate licensing state agency for possible disciplinary action, or the person's employer or direct report for possible disciplinary action. The inspector general shall have no duty to report acts of waste, fraud, abuse, or corruption to a person pursuant to this Code section if such person allegedly committed or is committing the act of waste, fraud, abuse, and corruption;

(4) Except as otherwise provided in this Code section, the inspector general shall report suspected acts of waste, fraud, abuse, or corruption arising out of any investigation of a state agency, official, officer, or employee, that were or are being committed by persons who are not officials, officers, or employees to the Governor, and to the appropriate state or federal prosecuting authority with jurisdiction over the matter if there is reasonable cause to believe that a crime has occurred or is occurring;

(5) The inspector general shall have the authority to investigate those cases where action has been taken against an officer or employee for having cooperated with the office. The inspector general shall report such actions to the Governor in the form of a detailed report identifying the officer or employee and the action taken against the officer or employee;

(6) Upon conclusion of an investigation by the inspector general, he or she shall issue a report. The report shall be filed with the Governor, and may be filed with the head of each state agency affected by or involved in the investigation. The report shall include the following:

(A) The basis for the investigation;

(B) The actions taken in furtherance of the investigation;

(C) Whether the investigation revealed that there was reasonable cause to believe that an act of waste, fraud, abuse, or corruption has occurred; and

(D) If an act of waste, fraud, abuse, or corruption was identified during the investigation, the inspector general shall identify the person who committed the act, describe the act, explain how it was detected, and indicate to whom it was reported;

(7) Identify other state agencies that are also responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies and negotiate and enter into agreements with such state agencies to share information to avoid duplication of effort;

(8) Consult with state agencies and advise them in developing, implementing, and enforcing policies and procedures that will prevent or reduce the risk of waste, fraud, abuse, and corruption by their officials, officers, or employees;

(9) After detecting waste, fraud, abuse, or corruption, review and evaluate the relevant policies and procedures of the state agency in which the act occurred, and advise the state agency as to any changes that should be made in its policies and procedures so as to prevent recurrences of similar acts of waste, fraud, abuse, and corruption;

(10) Develop and promulgate rules and regulations necessary for the implementation of this article;

(11) Develop a manual of investigative techniques; and

(12) Close an investigation when the inspector general concludes there is insufficient evidence that a violation has occurred. Closure by the inspector general shall not bar the inspector general from resuming the investigation if circumstances warrant.

45-12-213.

(a) It shall be the duty of every official, officer, and employee under the jurisdiction of the office to cooperate with the inspector general in any investigation undertaken pursuant to this article. Each state agency shall make its premises, equipment, personnel, books, records, and papers reasonably available to the inspector general.

(b) The inspector general shall be authorized to enter upon the premises of any state agency at any time, without prior announcement, if necessary for the successful completion of an investigation. In the course of an investigation, the inspector general shall be authorized to question any official, officer, or employee serving in, and other person transacting business with, the state agency, and may inspect and copy any books, records, or papers in the possession of the state agency, taking care to preserve the confidentiality of information contained in responses to questions or the books, records, or papers that is made confidential by law.

(c) In performing any investigation, the inspector general shall avoid interfering with the ongoing operations of the state agency being investigated; provided, however, that such interference is not reasonably necessary for the successful completion of the investigation.

(d) Other state agencies who are also responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies shall negotiate and enter into

agreements with the office for the purpose of sharing information and avoiding duplication of effort.

(e) Failure to cooperate with an investigation of the office shall be grounds for disciplinary action, including dismissal. Nothing in this Code section limits or alters a person's existing rights or protections under state or federal law.

(f) If the inspector general determines that any alleged misconduct involves any person not subject to the jurisdiction of the office, the inspector general shall refer the reported allegations to the appropriate body.

45-12-214.

(a) Any person who knows or has reasonable cause to believe that a official, officer, or employee has committed, or is in the process of committing, an act of waste, fraud, abuse, or corruption shall prepare and file with the office a complaint that identifies the person making the report and the official, officer, or employee who allegedly committed or is committing the act, describes the act, and explains with specificity how the person reporting knew or had reasonable cause to believe that the official, officer, or employee committed or is in the process of committing the act of waste, fraud, abuse, or corruption. The preparation and filing of the complaint described in this Code section is in addition to any other report that the person is required by law to make.

(b) The inspector general shall prescribe a form for complaints authorized pursuant to this Code section. The inspector general shall provide a blank copy of the form to the person, free of charge. No complaint is defective, however, because it is not made on the form prescribed by the inspector general.

(c) Any officer or employee who knowingly files a false complaint or files a complaint with reckless disregard for the truth or the falsity of the facts underlying the complaint may be subject to disciplinary action by the officer or employee's respective state agency.

45-12-215.

(a) In performing any investigation, the inspector general shall be authorized to administer oaths, examine witnesses under oath, and issue any subpoenas necessary to compel the attendance of witnesses and the production of all books, records, papers, and tangible items.

(b) The inspector general shall issue subpoenas only if:

(1) An investigation authorized pursuant to this article is being conducted;

(2) The investigation relates to misconduct within the programs and operation of state agencies;

(3) The inspector general has a reasonable belief that such misconduct has occurred; and

164 (4) The testimony of the witness or the documents or items sought by the subpoena are
165 relevant to the investigation.

166 (c) A person duly subpoenaed for testimony, documents, and other items who neglects or
167 refuses to testify or produce documents or other items under the requirements of the
168 subpoena shall be subject to punishment as may be determined by a court of competent
169 jurisdiction. Nothing in this Code section limits or alters a person's existing rights or
170 protections under state or federal law, including, but not limited to, seeking orders from a
171 court of competent jurisdiction to quash a subpoena.

172 45-12-216.

173 The office shall conduct studies of techniques of investigating and detecting, and of
174 preventing or reducing the risk of, waste, fraud, abuse, and corruption by officials, officers,
175 and employees.

176 45-12-217.

177 (a) The inspector general shall be authorized to receive and investigate complaints or
178 information from any official, officer, or employee concerning the possible existence of
179 any activity constituting waste, fraud, abuse, and corruption in or relating to any state
180 programs or operations under the jurisdiction of the executive branch.

181 (b) No state agency, officer, or employer shall take action against an official, officer, or
182 employee for disclosing or threatening to disclose the existence of any activity constituting
183 waste, fraud, abuse, and corruption to the inspector general, unless the disclosure or
184 threatened disclosure was made with knowledge that the disclosure was knowingly false
185 or with willful disregard for its truth or falsity.

186 (c) The inspector general shall not, after receipt of a complaint or information from an
187 official, officer, or employee, disclose the identity of such official, officer, or employee
188 without the consent of such official, officer, or employee, unless the inspector general
189 determines such disclosure is unavoidable during the course of the investigation.

190 45-12-218.

191 (a) Every official, officer, or employee shall report promptly to the inspector general any
192 information concerning waste, corruption, fraud, or abuse by another official, officer, or
193 employee relating to his or her office or employment, or by a person having business
194 dealings with a state agency relating to those dealings.

195 (b) The knowing failure of any official, officer, or employee to report information as
196 required in subsection (a) of this Code section or the knowing provision of false
197 information shall be cause for discipline up to and including discharge. Any official,

198 officer, or employee who acts in good faith pursuant to this Code section by reporting to
199 the inspector general improper governmental action shall not be subject to dismissal,
200 discipline, or other adverse personnel action.

201 45-12-219.

202 This article shall stand repealed on July 1, 2013."

203 **SECTION 2.**

204 Code Section 50-18-72 of the Official Code of Georgia Annotated, relating to when public
205 disclosure is not required, is amended by revising paragraph (4) of subsection (a) as follows:

206 "(4) Records of law enforcement, prosecution, the Office of State Inspector General, or
207 regulatory agencies in any pending investigation or prosecution of criminal or unlawful
208 activity, other than initial police arrest reports and initial incident reports; provided,
209 however, that an investigation or prosecution shall no longer be deemed to be pending
210 when all direct litigation involving said investigation and prosecution has become final
211 or otherwise terminated;"

212 **SECTION 3.**

213 All laws and parts of laws in conflict with this Act are repealed.